IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 381 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAMESHDUTT N SHARMA

Appearance:

1. Criminal Appeal No. 381 of 1993

Mr M A Bukhari, APP for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/12/2001

ORAL JUDGEMENT

This is an appeal under section 378 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), challenging the judgment and acquittal order recorded by

the learned Judicial Magistrate First Class (3rd Court) at Baroda dated 8.1.1993 in Criminal Case No.1142/92, under which the learned Magistrate acquitted the present respondent from the offence punishable under Sections 416, 420, 468 and 471 of IPC. The facts of the case leading to this appeal may be briefly stated as follows:

2. According to the case of the prosecution, the present respondent fabricated certain orders purported to have been issued by the Gujarat Electricity Board for sale of empty drums. It is also alleged that the respondent, under the aforesaid fabricated forms, sold those empty drums to one Jagdishbhai being the partner of a partnership firm. The respondent is also alleged to have collected Rs.36,000/- from the said witness towards sale price of those drums. Ultimately, it was noticed that delivery of the drums was not effected and the matter was noticed by the officers of the Gujarat Electtricity Board. A complaint was filed and investigation was entered into. The respondent was arrested and was enlarged on bail. At the conclusion of the investigation, charge sheet was filed before the above Court. The learned Magistrate provided copies of police investigation papers to the respondent. Charge was prepared and framed at Exh.4 on 18.8.1992. It was read over and explained to the respondent. He pleaded not guilty to the charge. The learned Magistrate proceeded to record evidence produced by the prosecution. After completion of the evidence, the learned Magistrate recorded further statement of the respondent under Section 313 of the Code and after hearing the parties, the learned Magistrate found that the prosecution had failed to prove the offence against the respondent. The learned Magistrate, therefore, pronounced a judgment acquitting the said respondent from the aforesaid offence. Feeling aggrieved by the judgment and acquittal order of the learned Magistrate, the State of Gujarat has preferred this appeal before this Court under section 378 of the Code. It has been mainly contended here that the learned Magistrate has not properly appreciated the evidence on record. The witnesses have supported the case of the prosecution and there was sufficient evidence to hold the respondent guilty for the offence in question. That therefore, the judgment and acquittal order are illegal and erroneous and deserve to be set aside. It is, therefore, prayed that the present appeal be allowed, the judgment and acquittal order be set aside and the respondent be held guilty for the aforesaid offence and be dealt with appropriately in accordance with law. On receiving the appeal, leave was granted and appeal was admitted. Mr M A Bukhari, learned APP appears

on behalf of the State. The respondent was duly served but he has not made any arrangement for his appearance in the matter.

3. I have heard Mr Bukhari, learned APP for the State and he has taken me through the records of appeal available with the Court. It is very clear that this is an appeal against the acquittal order recorded by the learned Magistrate. In this type of cases, the Court of appeal has to be extremely slow in interfering with the findings and reasonings of the trial court. Even when two views are possible, as a matter of judicial caution, the High Court would refrain from interfering with the order of the acquittal as the trial court had a chance of seeing the demeanor of witness while tendering evidence from the witness box. This principle can be gathered from a decision in the case of Gharasia Ratubha vs. State of Gujarat, reported in 1997 (3) GLR 2365 (SC). It is well settled that the Appellate Court can interfere with the judgment and acquittal order when it is found that the same are perverse and are eminently opposed to the evidence on record. This Court can also interfere with an acquittal order, if it is found that there is unreasonableness in the assessment of evidence by the trial court. It is well settled that proper weight has to be given to -

(i) The views of the trial court as to the credibility of the witness,

(ii) The presumption of innocence in favour of the accused,

(iii) The right of the accused to the benefit of doubt,

(iv) The trial court had an advantage of seeing the witness while tendering evidence from the witness box,

(v) If two views are possible, the views adopted by the trial court need not be altered. These principles can be gathered from a decision in the case of S B Joshi v. Arvind, reported in 1995 (2) GLH (VJ-24) 31.

Keeping the above principles in mind, this court is required to deal with the evidence recorded by the trial court in the case before it.

4. As said above, it was the case of the prosecution that the present respondent had sold empty barrels of the

GEB to a partnership firm, in which Jagdishbhai was a partner. The prosecution has examined Jagdishbhai at Exh.6 as a star witness. He has deposed before the trial court that he is partner of a partnership and he himself sits in the firm and carries on business. He has further made it clear that he has never purchased any goods or empty barrels from the present respondent. He has also stated that he knew the present respondent since last 3 to 4 years before he tendered evidence before the trial court. He also says that he knew him because wife of the respondent belongs to a place very near to the place of the business of the witness. He has also stated that there was no dealing between him and the respondent. He has also denied that he had purchased empty barrels of GEB from the respondent and had paid Rs.36,000/- to the respondent. He has also stated that the respondent had not issued any printed receipt to him.

5. The witness was examined and cross examined by the learned APP at greater length. However, nothing fruitful could be found out from the cross examination of this witness. In the cross examination, the witness has further said that he had never paid any amount to the respondent and the respondent had never issued any receipt to him. He has further said that printed form or quotations were not given to him by the present respondent. He has further said that higher officer of the GEB had taken him to the police station and he had given statement as per instructions given to him.

6. Another witness examined by the prosecution is Ramesh Bhanvarlal, who has stated that the previous witness Jagdishbhai is his cousin. But he says that he never met the present respondent. He was cross examined at length but nothing fruitful could be found out. He has also turned hostile.

7. The prosecution has examined other witnesses also. But they were not able to prove the contract between aforesaid witness and the respondent. Therefore, their evidence would not be material for the purpose of deciding the present appeal.

8. It is, therefore, clear that the material witnesses have totally denied the dealings between the witness and the respondent and there is no other evidence - direct or circumstantial proving the said dealings between them. The other witnesses were not witness to the said event as the contract had not taken place in their presence. The drums of Gujarat Electricity Board have not been parted with. The respondent had not handed

over those drums to the said two witnesses and the said two witnesses never obtained delivery, custody or possession of those drums. Therefore, this was at the best, an allegation of private contract between the respondent and the said witness. The two witnesses have not supported the case of the prosecution and, therefore, the learned Magistrate was justified in acquitting the present respondent. The evidence of other witnesses was not very much material for the purpose of deciding the case as submitted by the learned APP. It is also mentioned by the learned APP that these were the two star witnesses and their evidence was required to be weighed by the learned Magistrate. Even if we re-appreciate the said evidence, the matter could not be taken to a different direction. In the premises, it is clear that the learned Magistrate cannot be said to have committed any error in acquitting the present respondent. In that view of the matter, there is no merit in the present matter and accordingly it deserves to be dismissed.

9. For the foregoing reasons, this appeal is ordered to be dismissed. The judgment and acquittal order passed by the learned Judicial Magistrate First Class, Baroda are hereby confirmed.

19.12.2001 [D P Buch, J.]
msp